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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,778	02/06/2004	John Green	LA-7501-104.US	7920

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FULBRIGHT AND JAWORSKI L L P
PATENT DOCKETING 29TH FLOOR
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EXAMINER

ELKINS, GARY E

ART UNIT PAPER NUMBER

3727

DATE MAILED: 03/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/773,778

Applicant(s)

GREEN, JOHN

CP

Examiner

Gary E. Elkins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-11 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 4, 5, 7 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Solland et al. Solland et al discloses a container including a wall 7, rim 5, lid 11 and a groove 27 entirely below the rim. With respect to claim 2, the lid 11 has a greater diameter than the rim 5 as evidenced by the inward curvature below the rim as shown in fig. 3 (the straight diameter of the rim transversely of the container is less than the curved diameter therebelow).

4. Claims 1 and 3-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Godsey. Godsey discloses a container including a wall 15, 16, a rim 18, lid 11, and a groove formed by ridges 14a, 14b. With respect to claim 3, note is made of fig. 2 where the end portion of the ridge 14b is disposed opposite the hinged connection of the lid.

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5. Claims 1, 2, 4, 5, 7, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Sarson et al '420 (fig. 4E emb.). Sarson et al '420 discloses a container including a wall 2, rim 3, lid 4 and a groove formed by the lower edge of the panel 20 and the adjacent wall 2. With respect to claim 2, the lid has a greater diameter than the rim as evidenced by the inward curvature below the rim, i.e. the straight diameter of the rim transversely of the container is less than the curved diameter therebelow.

6. Claims 1, 2, 4, 5, 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Sarson et al '420 (fig. 4G emb). Sarson et al '420 discloses a container including a wall 2, rim 3, lid 4 and a groove formed by the bump 21 and the adjacent wall 2. With respect to claim 11, the periphery of the lid seats within the entirety of the groove as claimed.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Solland et al, Godsey or Sarson et al '420 (fig. 4E or 4G emb), each in view of Amberg. Each of Solland et al, Godsey and Sarson et al '420 discloses all structure of the claimed container except a pull tab opposite the hinged connection. Amberg teaches that it is known to make a recessed lid with a pull tab to facilitate opening the container while maintaining a seal. It would have been obvious to make the container lid in any one of Solland et al, Godsey or Sarson et al '420 with a

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pull tab as taught by Amberg to facilitate opening the container while providing a better engagement with the wall of the container. Pull tabs are well known in this art.

9. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 8 above, and further in view of either Carlsson et al (figs. 9-12a embs) or Schmalz. Each of modified Solland et al, Godsey and Sarson et al '420 evidences all structure of the claimed container except perforations adjacent the pull tab to permit opening the container without removal of the rest of the lid. Each of Carlsson et al and Schmalz teaches that it is known to open a container lid by providing perforations extending from a pull tab as opposed to removing the entire lid. It would have been obvious to make the lid in any one of Solland et al, Godsey or Sarson et al '420 with perforations as taught by either Carlsson et al or Schmalz to permit a controlled flow of material from the container through a smaller opening and to provide a better seal of the top of the container prior to opening.

Allowable Subject Matter

10. Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The remaining cited prior art is illustrative of the general state of the art.

In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (703)872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a

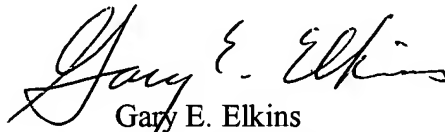
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fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. Also, copies of an office action or other file information may be obtained from the Private PAIR system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday, Wednesday and Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Lee Young can be reached at (571)272-4549.


Gary E. Elkins
Primary Examiner
Art Unit 3727

gee
16 March 2005